

AGENDA

COMMITTEE ON LANDS AND BUILDINGS

March 6, 2007

**Aldermen Thibault, Smith,
Forest, Roy, Long**

4:00 PM

**Aldermanic Chambers
City Hall (3rd Floor)**

1. Chairman Thibault calls the meeting to order.
2. The Clerk calls the roll.
3. Communication from Thomas Bowen, Water Works Director, seeking final approval of a conservation easement on a 460-acre parcel of land in the Town of Auburn primarily for the protection of the Lake Massabesic watershed, and secondarily, as a means of reducing Manchester Water Works' annual payment in lieu of taxes to the Town of Auburn.
Gentlemen, what is your pleasure?

TABLED ITEM

A motion is in order to remove the following item from the table for discussion.

4. Communication from Robert MacKenzie, Director of Planning & Community Development, advising that in order to proceed with disposition of certain properties the City owns on Wellington Hill two actions are required:
 - a) determination of surplus to City needs; and
 - b) approval of an agreement with the Diocese on the manner of disposition and the division of proceeds.

other actions required to include:

 - c) release and discharge of all paper streets; and
 - d) potential rezoning of the area.

(Tabled 01/16/2007)

5. If there is no further business, a motion is in order to adjourn.

Memo

February 26, 2007

TO: LANDS & BUILDINGS COMMITTEE
BOARD OF MAYOR & ALDERMEN
c/o CITY CLERK
ONE CITY HALL PLAZA
MANCHESTER, NH 03101

FROM: ^{TMB} THOMAS M. BOWEN, P.E., DIRECTOR

RE: MANCHESTER WATER WORKS' CONSERVATION EASEMENT

On January 16, 2007 Lands and Buildings Committee of the Board of Mayor and Aldermen gave conceptual approval to placing 460 acres of Manchester Water Works' owned property in the Town of Auburn into a Conservation Easement. The attached documents, which are in final draft form, are scheduled for consideration by the Board of Water Commissioners on Wednesday, February 28th. A summary of the terms of the document is enclosed in my memo of February 22, 2007 to the Board of Water Commissioners. As stated, the primary purpose for the Conservation Easement is twofold, primarily for the protection of the Lake Massabesic watershed, and secondarily, as a means of reducing Manchester Water Works' annual payment in lieu of taxes to the Town of Auburn.

It is therefore respectfully requested that the Committee approve, subject to final review and approval by the City Solicitor.

TMB:ds

Enclosures

cc: Thomas Clark, City Solicitor

Manchester Water Works

281 Lincoln St., Manchester, NH 03103, tel. 603-624-6494, fax: 603-628-6020

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Memo

-5-
2-28-07

February 22, 2007

TO: BOARD OF WATER COMMISSIONERS
FROM: *TMB* THOMAS M. BOWEN, P.E.
DIRECTOR

RE: CONSERVATION EASEMENT FOR LAND AT BATTERY POINT - AUBURN

Over the course of the last 18 months, the Manchester Water Works has been exploring the options available to placing a portion of its 3900± acres of watershed protection land in the Town of Auburn into a Conservation Easement. The primary purpose of such action is twofold: first, to provide long-term protection of the watershed property by legally removing the possibility that the property could be developed, and secondly, in so doing, to reduce the annual property tax paid by MWW to reflect the terms of the Conservation Easement.

Presented in final draft form for your consideration are:

1. Memorandum of Understanding which summarizes the general terms of agreement between the Manchester Water Works and the Society for the Protection of New Hampshire Forests, the proposed grantee of the easement.
2. The Conservation Easement which details the proposed purpose of the easement, permitted uses and rights of the parties including Manchester Water Works' right to withdraw the easement with 30 years notice and finally, dispute resolution language.
3. An Option Agreement which grants to the Forest Society the right of first refusal at fair market value for any watershed property that Manchester Water Works should declare surplus to our needs. The Option Agreement clearly exempts any property which the Manchester Water Works or the City of Manchester determines necessary for other public or municipal needs.

The final draft documents which you see before you are the culmination of several months of intense negotiations between the parties to ensure that their respective interests are protected both in a short and long term. For Manchester Water Works' part, we will retain the ability to manage the property in a manner which is consistent with our current operational activities. Manchester Water Works specifically retains the right to manage the forests, the trail systems, the shoreline consistent with our current operation and allows the general public use of the property for passive recreational activities and other special events consistent with our current operation. The Forest Society will monitor the property and uses to ensure that they are consistent with the stated purposes of the easement namely watershed protection.

Manchester Water Works

281 Lincoln St., Manchester, NH 03103, tel. 603-624-6494, fax: 603-628-6020

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Memo

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The 460-acre parcel located at Battery Point is potentially the first of a number of Conservation Easements which Manchester Water Works will consider placing on property along the shores of Lake Massabesic and within the watershed, as such, we have recognized the fact that there will not only be a financial benefit to Manchester Water Works, but an impact upon the property valuation within the Town of Auburn. We have had several meetings with representatives of the Auburn Selectmen's office and we continue to have discussions relative to Manchester Water Works' long-term plans in this regard. It is our intention to continue these discussions and prior to placing additional properties into a Conservation Easement, to put together a schedule which is in the best interest of the Manchester Water Works and recognizes the impact on the Town and its taxpayers.

On February 7, 2007 the Board of Trustees of the Forest Society agreed to accept the Conservation Easement on the Battery Point property and have authorized execution of the Option Agreement. In addition to approval by the Board of Water Commissioners, the documents must be approved by the Land and Buildings Committee of the Board of Mayor and Aldermen and the full Board. Such approvals are tentatively scheduled for Tuesday, March 6, 2007.

IT IS THEREFORE RECOMMENDED THAT THE BOARD APPROVE THE MEMORANDUM OF UNDERSTANDING, CONSERVATION EASEMENT AND OPTION AGREEMENT AS SUBMITTED SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY SOLICITOR.

TMB:ds

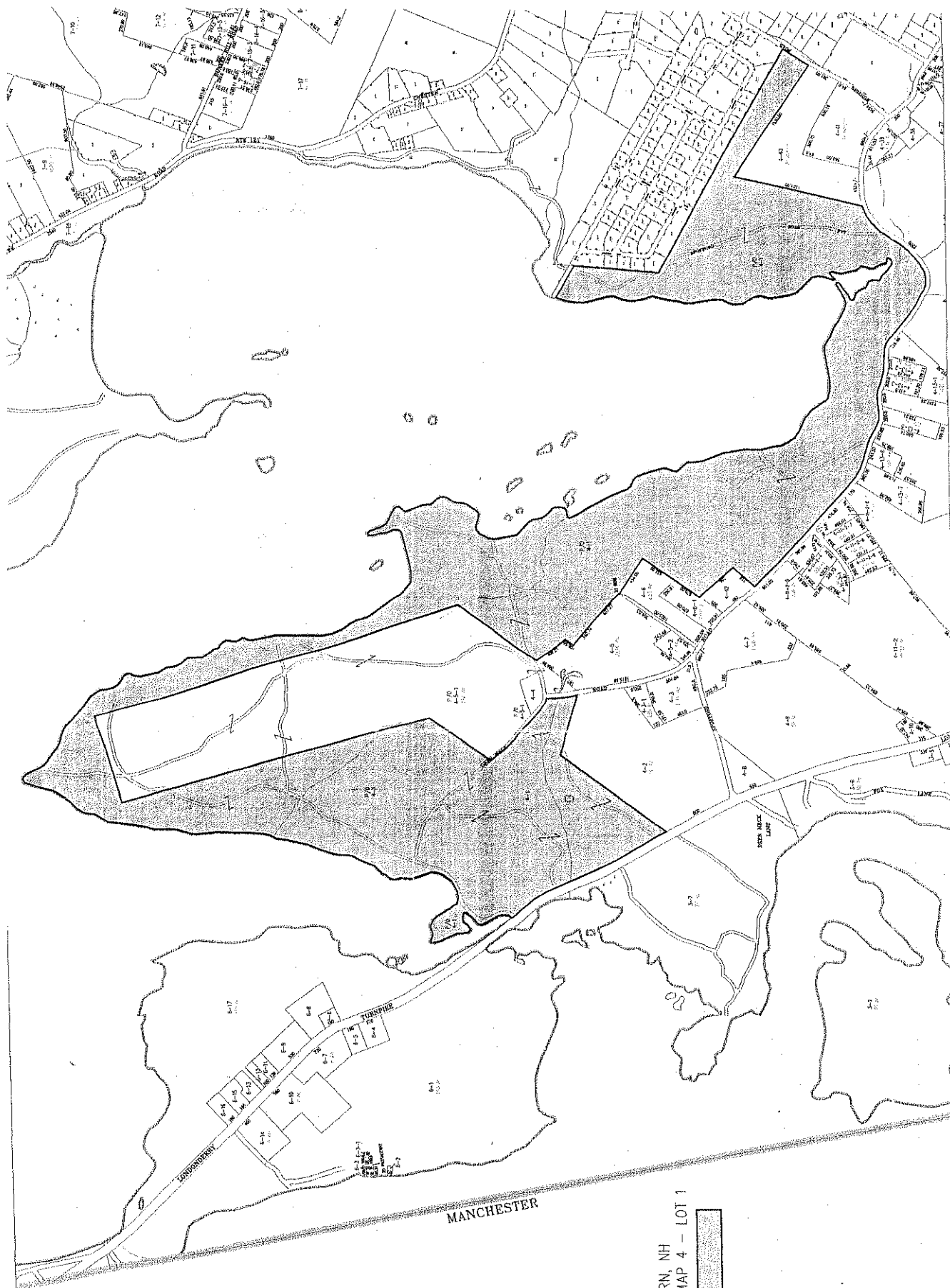
Attachments

bwc7

Manchester Water Works

281 Lincoln St., Manchester, NH 03103, tel. 603-624-6494, fax: 603-628-6020

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AUBURN, NH
TAX MAP 4 - LOT 1



MANCHESTER

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MEMORANDUM OF UNDERSTANDING

Parties:

MWW: The City of Manchester, through Manchester Water Works, 281 Lincoln Street, Manchester, New Hampshire 03103

Forest Society: Society for the Protection of New Hampshire Forests, 54 Portsmouth Street, Concord, New Hampshire 03301

Date:

Recitals:

- a) MWW, a division of the City of Manchester, provides water for all purposes, including drinking water, to customers within and without the City of Manchester.
- b) To protect its watershed, primarily Lake Massabesic and its tributaries, MWW has over many years acquired ownership, either in its own name or that of the City, of land in Auburn, New Hampshire
- c) MWW's land in Auburn is not eligible for current use status. Because such land is not currently under a formal conservation easement it is eligible for development to varying extents.
- d) MWW does not intend to develop its watershed protection land as long as such land is deemed by MWW to be needed for watershed protection.
- e) By state statutes, MWW's Auburn watershed protection land is assessed for a payment in lieu of taxes for real property tax purposes at its full market value as developable land, and is ineligible for current use status. The Town of Auburn has assessed the Auburn watershed protection land based in large part on its development potential.
- f) To provide for long-term protection of the Auburn watershed protection land, and to formalize MWW's desire to eliminate the possibility of development, MWW (which term includes the City) wishes to grant an initial conservation easement on approximately 460 acres of the Auburn watershed protection land shown on Town tax maps as Map 4 Lot 1 to the Forest Society.
- g) MWW's land both in Auburn and the nearby municipalities of Manchester, Chester, Candia and Hooksett contain important natural resource attributes, including highly productive forests and forest soils, important wildlife habitat including nearly four miles of riparian habitat along the shores of Lake Massabesic, extensive recreational trails, access to public waters for fishing and boating, and scenic views.

- h) The MWW lands are located within the most densely populated portion of the State of New Hampshire and are within driving access of most of the state's population.
- i) The Forest Society deems the protection of MWW's watershed protection land as open space to be of extraordinary importance.
- j) The Parties are sensitive to the impact that the proposed initial and potential subsequent conservation easements may have, both environmentally and fiscally, on the Town of Auburn. The Parties wish to commit to attempting to work with the Town of Auburn to obtain acceptance of the initial conservation easement.
- k) The parties have discussed the possibility that future changes in the technology of water supply and/or other factors could in the long term diminish the need for retention by MWW of some or all of such watershed protection land.
- l) MWW wishes to leave open the possibility that, upon such elimination, MWW could eventually sell the Auburn watershed protection land so as to realize its value for its customers. MWW has therefore proposed that the conservation easement to the Forest Society shall contain a provision permitting MWW to withdraw from the easement any portion of land placed under conservation easement provided that MWW provides notice of the intent to withdraw no less than 30 years prior to said withdrawal. The effect of this mechanism will be to require 30 years' notice of termination of the easement on any or all portions of the land placed under easement.
- m) The parties may elect to add other MWW watershed protection parcels in Auburn to the conservation easement, such that all MWW lands placed under conservation easement will be subject to substantially the same terms and restrictions.
- n) The Forest Society prefers permanent protection of the Auburn watershed protection land, and desires the opportunity to permanently protect all of MWW's approximately 8000 acres of watershed protection land.
- o) The Parties are entering into this Memorandum of Understanding to outline their general conceptual agreement as to the process for obtaining the conservation easement and a right of the Forest Society to permanently protect any watershed protection land MWW deems unnecessary to own.

Therefore, in consideration of the terms and conditions of this Agreement, which consideration the parties agree is good and sufficient, the parties agree as follows:

1. MWW and the Forest Society agree that the Parties shall work to determine the specific terms of the conservation easement from MWW to the Forest Society. The target date for recording of the proposed conservation easement is not later than March 30, 2007. The conservation easement shall run in perpetuity and contain the 30 year withdrawal provision mentioned above. The conservation easement shall contain language allowing the Forest Society to purchase, at fair market value, full fee ownership

Manchester Water Works

by _____
its _____
duly authorized

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February 22, 2007 10:59 AM

SPNHF 2-20-07

Draft 2/20/07

This draft accepts changes that were circulated in the 2/8/07 draft.

Changes made since that time are redlined, along with areas still under discussion

CONSERVATION EASEMENT DEED

The **CITY OF MANCHESTER**, through its division, Manchester Water Works, a New Hampshire municipal corporation with an address of c/o Director, Manchester Water Works, 281 Lincoln Street, Manchester, New Hampshire 03103 (hereinafter referred to as the "Grantor", which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with WARRANTY covenants, grants in perpetuity to

the **SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS**, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 54 Portsmouth Street, City of Concord, County of Merrimack, State of New Hampshire, 03301-5400, (hereinafter referred to as the "Grantee" which shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

the Conservation Easement (herein referred to as the "Easement") hereinafter described with respect to that certain area of land (herein referred to as the "Property") with any and all buildings, structures, and improvements thereon, consisting of approximately 460 acres, identified as Tax Map 4 Lot 1 on the Town of Auburn Tax Maps, situated on Londonderry Turnpike and Spofford Road in the Town of Auburn, County of Rockingham, State of New Hampshire, more particularly bounded and described in Appendix "A" attached hereto and made a part hereof.

1. PURPOSES

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation Purposes (herein referred to as the "Purposes") for the public benefit:

- A. The protection of the quality and availability of ground water and surface water resources on, under and adjacent to the Property, including Lake Massabesic, which serves as the public water supply for citizens of the greater Manchester area, and to prevent any

development, construction, or use that will impair or interfere with the watershed conservation values of the Property; and

- B. The conservation and protection of open spaces, particularly the conservation of the productive forest land of which the Property consists and of the wildlife habitat thereon, and the protection of the approximately 20,750 feet of undeveloped feet of water frontage along Lake Massabesic, to which the Property provides access and upon which it fronts, and the long-term protection of the Property's capacity to produce economically valuable agricultural and forestry products and drinking water; and
- C. The protection of the significant natural habitat identified as "sandy pond shore system" by the New Hampshire Natural Heritage Bureau and significant habitat for wildlife requiring riparian and shoreline habitat and adjacent undeveloped upland habitat by Lake Massabesic; and
- D. The scenic enjoyment of the general public, including scenic views of the undeveloped shoreline on the Property from Lake Massabesic, a public waterbody, and of the Property from public roads, including the Londonderry Turnpike and Spofford Road, and from publicly-accessible footpaths on the Property as provided for in Section 2.I. below; and;
- E. The protection of the Property and Lake Massabesic on which it fronts for outdoor recreation by and/or the education of the general public.

The above Purposes are consistent with New Hampshire RSA Chapter 79-A which states:

"It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources,"

and with the clearly delineated conservation goals and/or objectives as stated in the December 2001 Master Plan of the Town of Auburn, which include:

Land Use Goal 1: Preserve those community features that contribute to Auburn's rural character and quality of life.

Objective 1: Preserve the natural and cultural features that contribute to Auburn's character, such as Lake Massabesic, Little Massabesic Lake, Clark Pond, other ponds, streams and rivers; prime agricultural land, woodlands, quality views, wetlands, country roads, stone walls, and valuable open-spaces.

...

Objective 5: Preserve specific scenic areas, open-spaces and view corridors and develop a priority ranking of those areas for protection purposes.

Objective 6: Employ appropriate land use controls and non-regulatory mechanisms (i.e. deed restrictions, conservation easements) to manage growth and to protect the Town's rural

character.

Recreation Goal 2: Encourage the long-term use, maintenance, and improvement of existing recreational facilities.

...

Objective 5: Maintain the existing close relationship with Manchester Water Works and the Massabesic Audubon Center.

...

Recommendation 5: Encourage Auburn residents to use the many recreational opportunities provided by the Manchester Water Works and the Massabesic Audubon Center.

Recommendation 6: Encourage Manchester Water Works and the Massabesic Audubon Center to work with the town in planning and developing an integrated network of recreational trails. Connect the trail system with existing and proposed open-space areas in cluster developments whenever possible and practical.

Conservation and Preservation Goal 1: Recognize the important contribution that the Town's natural resources and cultural and historic amenities make to the overall character and well-being of the town.

...

Objective 2: Identify important natural resources and prepare strategies designed to preserve them for future enjoyment.

...

Goal 2: Protect and manage Auburn's valuable open-space resources.

...

Objective 2: Provide an integrated network of open-space areas and appropriate natural resource areas.

...

Objective 6: Identify for possible preservation those key natural features such as lakes, ponds, streams, rivers, prime agricultural land, valuable woodlands, quality viewscapes, wetlands, and other valuable open-space areas that contribute to Auburn's character.

Objective 7: Identify for future protection important scenic areas and view corridors; develop a priority ranking of these areas for purposes of protection.

...

Recommendation 5: Work with Manchester Water Works, the Massabesic Audubon Center and other non-profit organizations to enhance existing open-space areas.

These purposes are consistent with the clearly delineated goals of New Hampshire Code of Administrative Rules Env-Ws 386.01, which were promulgated "to recognize the importance of those surface water supplies that are used as sources of public water supply and to provide methods for reasonable watershed management so as to maintain high levels of water quality", and 386.47(a), which has as its purpose "to protect the purity of water of Lake Massabesic, which is the principal drinking water supply for the city of Manchester and portions of the towns of:

- (1) Auburn;
- (2) Bedford;

- (3) Derry;
- (4) Goffstown;
- (5) Hooksett; and
- (6) Londonderry."

The Easement hereby granted with respect to the Property is as follows:

2. USE LIMITATIONS (Subject to the reserved rights specified in Section 3 below)

The Property shall be maintained in perpetuity as open space subject to the following use limitations:

- A. There shall not be conducted on the Property any industrial or commercial activities, except agriculture and forestry, including timber harvesting, as described below, and provided that the productive capacity of the Property to yield forest and/or agricultural crops shall not be degraded by on-site activities.
 - i. For the purposes hereof, "agriculture" and "forestry" shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other accessways for the purpose of removing forest products from the Property; and the processing and sale of products produced on the Property (such as pick-your-own fruits and vegetables and maple syrup), all as not detrimental to the Purposes of this Easement.
 - ii. Agricultural activities are subject to prior written approval of the Grantee, such approval to be based on the determination that the activities are consistent with the Purposes of this Easement. Agriculture for industrial or commercial purposes shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Property. Said agriculture shall be in accordance with the then-current scientifically based practices recommended by the UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Said agricultural activities shall not be detrimental to the Purposes of this Easement, nor materially impair the scenic quality of the Property as viewed from Massabesic Lake, public roads, or public trails.
 - iii. Forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the following goals, and in a manner not detrimental to the Purposes of this Easement.
 - a. The goals are:
 - maintenance of soil productivity;
 - protection and enhancement of water quality and quantity;
 - protection of wetlands, and riparian zones;

- maintenance or improvement of the overall quality of forest products;
 - conservation of scenic quality;
 - protection of unique or fragile natural areas;
 - protection of unique historic and cultural features; and
 - conservation of native plant and animal species.
- b. Such forestry shall be performed in accordance with a written forest management plan consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee. Said plan shall have been prepared not more than ten years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date.
- c. At least thirty (30) days prior to harvesting, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the plan itself to Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
- d. The plan shall include a statement of landowner objectives, and shall specifically address:
- the accomplishment of those Purposes for which this easement is granted;
 - the goals in Section 2.A.iii.a above; and
 - protection of water quality of Lake Massabesic.
- e. Timber harvesting with respect to such forestry shall be conducted in accordance with said plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- f. Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 1996), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (New Hampshire Forest Sustainability Standards Work Team, 1997), or similar successor publications.
- g. In areas used by, or visible to the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations

contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Geoffrey Jones, 1993) or similar successor publications.

- B. The Property shall not be subdivided and none of the individual tracts which together comprise the Property shall be conveyed separately from one another, except that the lease of any portion of the Property for any use permitted by this Easement shall not violate this provision.
 - C. No structure or improvement shall be constructed, placed, or introduced onto the Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property and which may include but not be limited to a dock, road, dam, fence, utility line, bridge, culvert, barn, maple sugar house, or shed; and ii) not detrimental to the Purposes of this Easement. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Property any of the following structures or improvements: dwelling, mobile home, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, or aircraft landing area.
 - D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:
 - i. are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Property; and
 - ii. do not harm state or federally recognized rare, threatened, or endangered species, or exemplary natural communities, such determination of harm to be based upon information from the New Hampshire Natural Heritage Bureau or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
 - iii. are not detrimental to the Purposes of this Easement.
- Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.
- E. No outdoor advertising structures shall be displayed on the Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Property, and provided such structures are not detrimental to the Purposes of this Easement. No sign on the Property shall exceed 24 square feet in size, and no sign shall be artificially illuminated.
 - F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Property, except in connection with any

improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Property.

- G. There shall be no dumping, injection, burning, or burial of man-made materials or materials then known to be environmentally hazardous.
- H. No rights-of-way or easements of ingress or egress in favor of any third party shall be created or developed into, on, over, or across the Property without the prior written approval of the Grantee, such approval to be based on a determination of consistency with the Purposes of this Easement, except those of record as of the execution of this Easement and those specifically permitted in the provisions of this Easement.
- I. Except as allowed under Section 3.A.g., the Property shall not be posted against, and the Grantor shall keep access to and use of the Property open to the public for pedestrian non-commercial, outdoor recreational and outdoor educational purposes such as but not limited to hiking, wildlife observation, and cross-country skiing. The Grantee shall be under no duty to supervise said access, use, or purpose.

3. RESERVED RIGHTS

- A. The Grantor reserves the right to use and manage the Property for the purpose of drinking water production and sale, including:
 - a. To implement best watershed management and protection practices, and to adapt and improve such practices as information and technology change; and
 - b. To manage the soils and plant and animal species to protect the biological integrity of the Massabesic watershed, including the management and maintenance of lake levels, natural water flows and infiltration rates, runoff characteristics, and temperatures, and to minimize erosion of soil; and
 - c. To manage unauthorized activities in the watershed, such as unauthorized swimming and disposal of waste and hazardous materials; and
 - d. To obtain access to, control, treat, manage, withdraw and monitor the waters of Lake Massabesic; and
 - e. To install, maintain, monitor and replace water works structures, piping, and ancillary improvements such as roads, utilities, security facilities, fences, drainage systems and signs; and
 - f. To erect and maintain signs and kiosks to provide information for watershed protection, educational or recreational purposes; and
 - g. To post the Property against swimming, firearms, hunting, trapping, fishing, camping, motorized off-road recreational vehicles, pets, and any other activities determined by the Grantor to be detrimental to the efficient and safe operation of water supply facilities, and furthermore, to post the Property against public access to agricultural cropland during the planting and growing season; to lands while being grazed by livestock; and to forestland during harvesting or other forest management activities.
 - h. To conduct operations pursuant to applicable emergency response plans; and

- i. To conduct activities, and to license other organizations to conduct activities, consistent with the Purposes of this Easement.
- B. The Grantor reserves the right to conduct outdoor educational activities on the Property relating to watershed and environmental issues, including but not limited to events, demonstrations, classes, studies, experiments, tours, field trips and other events of an educational nature, consistent with the Purposes of this Easement.
- C. The Grantor reserves the right to build and maintain paved and unpaved trails, fire roads, access roads, boat access points, and paved and unpaved parking facilities on the Property for use by the Grantor and/or to serve low-impact recreational and educational use of the Property by the public, consistent with the Purposes of this Easement.
- D. The Grantor reserves the right to construct, maintain, and operate permanent and/or temporary public restrooms for educational and recreational users of the Property, consistent with the Purposes of this Easement. The Grantor must notify the Grantee in writing at least thirty (30) days before constructing new permanent public restrooms.
- E. The Grantor reserves the right to build and maintain structures for the purpose of wildlife observation, such as bird blinds, to serve low-impact recreational and educational use of the Property by the public, consistent with the Purposes of this Easement. The Grantor must notify the Grantee in writing at least thirty (30) days before any exercise of this aforesaid reserved right.
- F. The Grantor reserves the right to maintain trash and recycling receptacles, and to maintain sufficient personnel, equipment and facilities for its patrol of the Property to enforce its rules for public use of the Property and protection of the water supply, and to enforce applicable regulation of public use of the Property, including but not limited to rules of the Board of Water Commissioners and the NH Department of Environmental Services.
- G. Grantor and Grantee acknowledge the existing recreational and educational license with the Audubon Society of New Hampshire and Grantor reserves the right to enter in future licenses with the Audubon Society of New Hampshire, consistent with the Purposes of this Easement. .

4. DISPOSITION OF RIGHTS TO THE PROPERTY AND WITHDRAWAL OF LAND FROM THE PROPERTY

- A. Grantor shall not dispose of or otherwise transfer any ownership interest in the Property. The exceptions to this rule shall be:
 - i) Grantor may grant rights to the use of the Property, such as rights of way, easements, and limited-use leases to third parties upon prior written notice to the

Grantee provided that the use of such rights is consistent with the Purposes and terms of this Easement; and

- ii) Grantor may grant fee interest, subject to this Easement, to any portion of the Property to the Town of Auburn for municipal uses upon prior written notice to the Grantee.

B. The Grantor shall notify the Grantee at least thirty years in advance of any withdrawal of land from the Property subject to this Easement. The notice of withdrawal shall specify the land to be withdrawn (the Withdrawal Land) and the date on which such withdrawal shall become effective (the Withdrawal Date)

. (1) The Grantor shall promptly record the notice of withdrawal in the Rockingham County Registry of Deeds. The Easement shall continue in full force and effect as to any land not specified for withdrawal. Unless otherwise agreed to by the Grantee, the Withdrawal Land shall consist of one or more tracts as submitted to this Easement; for example, the land submitted to this Easement upon its original execution shall be deemed to be the first tract, and any withdrawal applicable to the first tract shall apply to the entire first tract.

(2) The Grantee shall have the right to purchase the Withdrawal Land on the following terms and conditions:

(a) Not later than four years prior to the Withdrawal Date, the Grantor and the Grantee shall designate an appraiser who shall, at Grantor's cost, prepare an independent fee appraisal of the fair market value of the Withdrawal Land on a highest-and-best use (i.e. free and clear of this Easement, and including applicable development potential)(the Appraisal Value) as of the date three years before the Withdrawal Date (the Appraisal Date). The appraiser shall also report the average rate of change in the Appraisal Value of the Withdrawal Land over the ten years prior to the Appraisal Date.

(b)The Grantee shall notify the Grantor not later than two years before the Withdrawal Date of its exercise of its right to purchase the Withdrawal Land at the appraised value as of the Withdrawal Date, which shall be deemed to be the Appraisal Value plus an amount equal to the assumed change in such Appraisal Value obtained by applying such 10-year average change rate for the three years until the Withdrawal Date (the Purchase Notice).

(c) If no Purchase Notice is given by the Grantee to the Grantor by such date two years before the Withdrawal Date, then the right of first offer shall be deemed to have been waived as to such Withdrawal Land, and the Grantor may freely offer and transfer such Withdrawal Land following the Withdrawal Date in compliance with then-existing law free and clear of this Easement. Recording of a recital by the Grantor that the terms of this paragraph have been satisfied shall be sufficient proof of the same.

(d) The parties shall each pay their respective share of any transfer tax due upon any acquisition of the Withdrawal Land. The parties may by mutual agreement recorded in the Rockingham County Registry of Deeds alter the terms of this section 4.B to allow the Grantee to purchase the Withdrawal Land sooner, to allow for acquisition by the Grantee of rights other than full fee interest in some or all of the Withdrawal Land, or for any other purpose deemed appropriate by both parties. The rights of the Grantee under this paragraph as to any one or more tracts of Withdrawal Land may be assigned to a party eligible under section 7 of this Easement upon notice as set forth in such section.

5. AMENDMENT AND DISCRETIONARY CONSENT

Grantor and Grantee recognize that circumstances could arise that justify amendment of certain of the terms, covenants, or restrictions contained in this Easement, and that some activities may require the discretionary consent of Grantee. To this end, Grantor and Grantee have the right to agree to amendments and discretionary consents to this Easement without prior notice to any other party, provided that in the sole and exclusive judgment of the Grantee, such amendment or discretionary consent furthers or is not inconsistent with the Purposes of this Easement. Amendments will become effective upon recording at the Rockingham County Registry of Deeds.

6. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

- A. The Grantor shall not transfer title to the Property except in compliance with the Option Agreement between the Grantor and the Grantee recorded with this Easement.
- B. The Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

7. BENEFITS AND BURDENS

The burden of the Easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only on 6 month's notice to the Grantor. Such assignment or transfer shall be made only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas, agrees to and is capable of protecting the conservation purposes of this Easement, and has the resources to enforce the restrictions of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

8. AFFIRMATIVE RIGHTS OF GRANTEE

- A. The Grantee shall have reasonable access to the Property and all of its parts for such

inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

- B. To facilitate such inspection and to identify the Property as conservation land protected by the Grantee, the Grantee shall have the right to place signs, each of which shall not exceed 24 square inches in size, along the Property's boundaries.

9. RESOLUTION OF DISAGREEMENTS

- A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.
- B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator. Mediation shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.
- C. If the parties agree to bypass mediation, if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Concord, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.
- D. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Property, the Grantee may seek a temporary restraining

order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Property to its condition prior to any breach.

10. BREACH OF EASEMENT – GRANTEE’S REMEDIES

- A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Property, to restore the portion of the Property so injured to its prior condition.
- B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.
- C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- D. The Grantee shall be entitled to recover damages from the party directly or primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Grantor’s liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.
- E. The Grantee’s rights under this Section, “Breach of Easement...,” apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, “Resolution of Disagreements,” which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee’s rights hereunder.
- F. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, “Breach of Easement...,” both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee’s remedies described in this Section, “Breach of Easement...,” shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Conservation Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.
- I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.
- J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

11. NOTICES

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

12. SEVERABILITY

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of

such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

13. CONDEMNATION/EXTINGUISHMENT

- A. Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, or whenever all or a part of the Property is lawfully sold without the restrictions imposed hereunder in lieu of exercise of eminent domain, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.
- B. The balance of the land damages recovered from such taking or lawful sale in lieu of exercise of eminent domain shall be divided between the Grantor and the Grantee in proportion to the fair market value, at the time of condemnation, of their respective interests in that part of the Property condemned. For this purpose and that of any other judicial extinguishment of this Easement, in whole or in part, the values of the Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation or extinguishment.
- C. The Grantee shall use its share of the proceeds resulting from condemnation or extinguishment in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein and within the geographic limits of Lake Massabesic watershed.

14. ADDITIONAL EASEMENT

Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in the Section "Benefits and Burdens," above, accepts and records the additional easement.

THIS IS A NON-CONTRACTUAL CONVEYANCE PURSUANT TO NEW HAMPSHIRE RSA 78-B:2 AND IS EXEMPT FROM THE NEW HAMPSHIRE REAL ESTATE TRANSFER TAX.

The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day
of _____, 2007

CITY OF MANCHESTER

By _____
Name: Frank C. Guinta

Title: Mayor
Duly authorized

THE STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this _____ day of _____,
2007, by Frank C. Guinta, Mayor of the City of Manchester.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

ACCEPTED: SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

By: _____

Title: _____
Duly Authorized

Date: _____

The State of New Hampshire

County of _____

Personally appeared _____
Print Name & Title

of the Society for the Protection of New Hampshire Forests, this _____ day of

_____, 200____, and acknowledged the foregoing on behalf of the

Society for the Protection of New Hampshire Forests.

Before me, _____
Justice of the Peace/Notary Public

My commission expires: _____

APPENDIX A

The "Property" subject to this Easement is that tract of land with any and all structures and improvements thereon situated on Road, so-called, in the Town of , County of , State of New Hampshire, consisting of approximately acres, shown on a plan entitled " , " by , last revised , recorded at _____ at the County Registry of Deeds (hereafter "Plan"), and more particularly bounded and described as follows:

To be drafted based on composite map.

OPTION AGREEMENT

Parties:

MWW: The City of Manchester, through Manchester Water Works, 281 Lincoln Street, Manchester, New Hampshire 03103

Forest Society: Society for the Protection of New Hampshire Forests, 54 Portsmouth Street, Concord, New Hampshire 03301

Date:

Recitals:

- a) MWW, a division of the City of Manchester, provides water for all purposes, including drinking water, to customers within and without the City of Manchester.
- b) To protect its watershed, primarily Lake Massabesic and its tributaries, MWW has over many years acquired ownership, either in its own name or that of the City, of approximately 8,000 acres in Manchester and surrounding towns.
- c) MWW does not intend to develop its watershed protection land as long as such land is deemed by MWW to be needed for watershed protection.
- d) The parties have discussed the possibility that future changes in the technology of water supply and/or other factors could in the long term diminish the need for retention by MWW of some or all of such watershed protection land.
- e) Much of the highest development value of MWW land attaches to its waterfront land along Lake Massabesic in Auburn. The Forest Society has agreed to accept one or more conservation easement(s) on MWW land in Auburn so as to provide long-term protection of such land against development.
- f) The Forest Society has requested that MWW commit to permanent protection of all of its watershed protection lands.

Therefore, in consideration of the terms and conditions of this Agreement, which consideration the parties agree is good and sufficient, the parties agree as follows:

1. Simultaneously with the execution and delivery of this Agreement, MWW is giving, and the Forest Society is accepting, a conservation easement on land in Auburn, Rockingham County, New Hampshire, on the terms as set forth in said conservation easement.

2. MWW (which term includes the City) shall not dispose of or otherwise transfer any ownership interest in any land now or hereafter held by it for watershed protection purposes in the municipalities of Auburn, Chester, Candia, Hooksett and Manchester without first providing to the Forest Society a right of first offer on such property. The exceptions to this rule shall be:

- a) land encumbered by conservation easement referred to in paragraph 1, above;
- b) land encumbered by future conservation easements donated by MWW on any of the watershed lands;
- c) MWW may grant rights to the use of land subject to this Option Agreement, such as rights of way, easements, and limited-use leases to third parties to the extent MWW deems that the use of such rights shall not materially interfere with its watershed protection program; and
- d) acquisition of any portion of such watershed protection land by the City from MWW for other municipal uses (such as but not limited to school or emergency services uses).

Any grants of rights to land by MWW pursuant to the above exceptions shall not be deemed to cause the affected land to be designated as Surplus Land for purposes of this Agreement.

3. MWW shall notify the Forest Society in advance of any determination that any land now or hereafter held by MWW (which term includes the City) shall no longer be required for watershed protection purposes (the "Surplus Land"). The parties shall, to the extent feasible, consult with each other as to whether such land might be best purchased in its entirety by the Forest Society, divided so that some is held for conservation purposes (including conservation easement status), or otherwise disposed of, with MWW having final determination power. Upon determination that any land shall be "Surplus Land", MWW shall so notify the Forest Society, which notice shall include a current independent fee appraisal of the fair market value of the Surplus Land on a highest-and-best use (i.e. free and clear of any existing conservation easement, and including applicable development potential). The Forest Society shall have ninety (90) days from the date of such notice to notify MWW that it wishes to purchase the Surplus Land in perpetuity as open space.

If no such notice is given by such 90th day, then the right of first offer shall be deemed to have been waived as to such Surplus Land, and MWW may freely offer and transfer such Surplus Land in compliance with existing ordinances without regard to this Agreement. Recording of a recital by MWW that the terms of this paragraph have been satisfied shall be sufficient proof of the same.

In the event that the Forest Society shall request to purchase and MWW shall offer to sell a conservation easement on all or a portion of said Surplus Land, the Forest Society and MWW agree to cooperate to establish the terms of said conservation easement and subsequently prepare an independent appraisal of the value of said easement. Valuation shall be equal to the fair market value of the affected land without such easement minus the resulting fair market value of the affected land subject to such easement.

If the Forest Society notifies MWW of its exercise of this right of first offer, the Forest Society shall consummate its purchase of the Available Land within 12 months of such notice of exercise. If the parties agree on the sale and purchase of a conservation easement, the Forest Society shall consummate its purchase of said easement within 12 months of the completion of the aforementioned easement appraisal. The parties shall each pay their respective share of any transfer tax, and any applicable property tax or other imposition shall be prorated.

4. The Forest Society may upon giving MWW 6 months notice, assign its interest in this Agreement to a third party as to any affected piece of land, provided that MWW shall have no obligation to obtain or approve any subdivision or other authority claimed by any governmental division to be required for the sale of any interest in such land if multiple assignees exercise rights to land that would not require such authority if such rights were to be exercised by a single party.

5. This Agreement shall run to the benefit of and shall be a burden on the respective parties or any successor.

[signatures and acknowledgments]

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February 22, 2007~~February 6, 2007~~ 11:11 AM+1:44 AM

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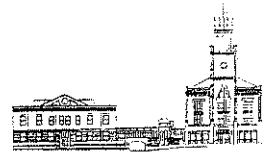


Robert S. MacKenzie, AICP
Director

CITY OF MANCHESTER

Planning and Community Development

Planning
Community Improvement Program
Growth Management



Staff to:
Planning Board
Heritage Commission
Millyard Design Review Committee

12-05-06 -
Consented w/ plan +
allow Planning to
proceed.
01-16-07 Tabled

November 30, 2006

Committee on Lands and Buildings
City Hall
One City Hall Plaza
Manchester, NH 03101

re: *Informational Update concerning Wellington Hill "mini lots"*

Honorable Committee Members:

I would like to reserve a short amount of time at your next meeting to provide you with an informational update concerning the numerous small-sized city-owned parcels which are located in close proximity to each other on Wellington Hill.

Sincerely,

Robert S. MacKenzie, AICP
Director of Planning and Community Development

4

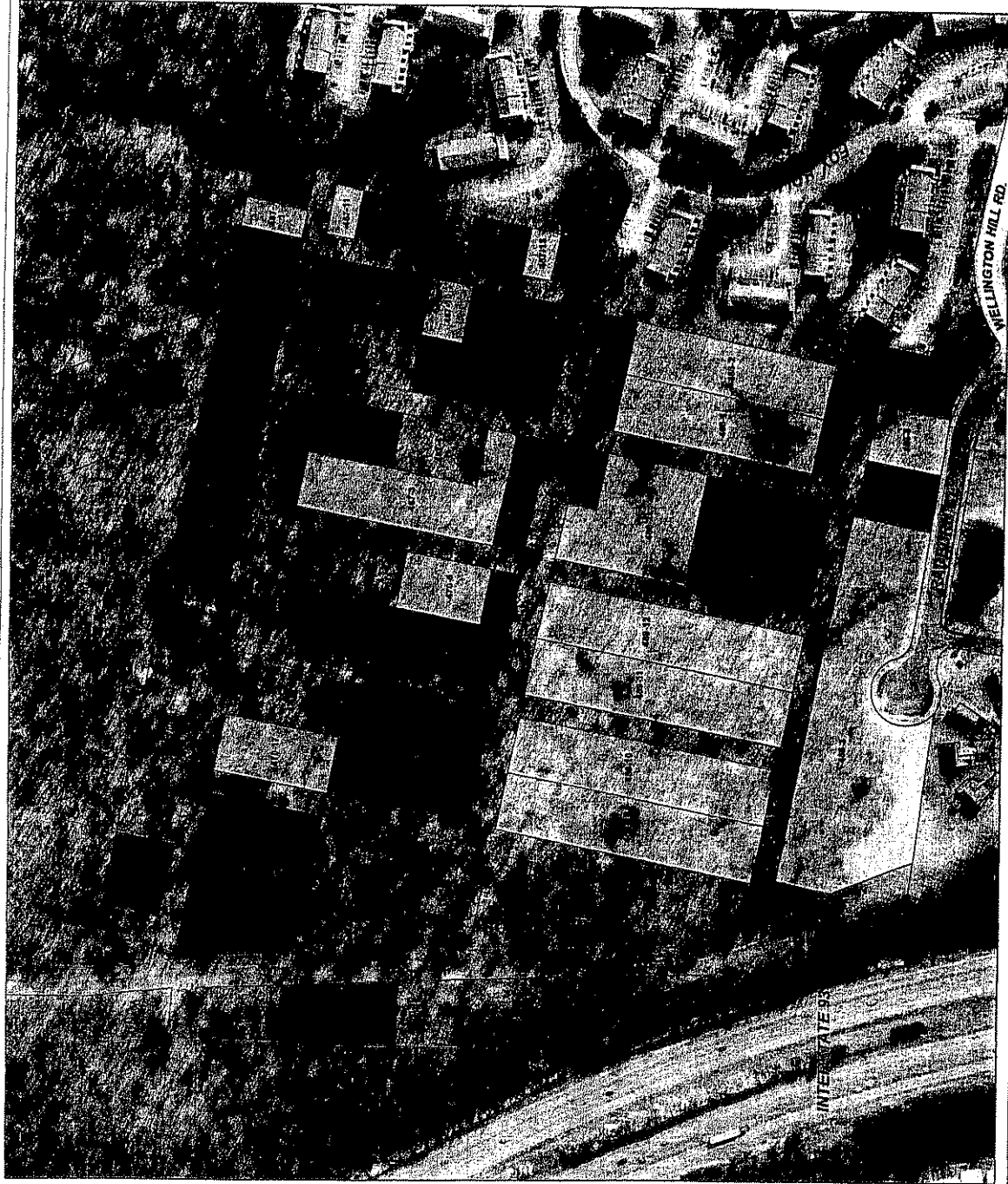
One City Hall Plaza, Manchester, New Hampshire 03101
Phone: (603) 624-6450 Fax: (603) 624-6529
E-mail: planning@ManchesterNH.gov
www.ManchesterNH.gov

Vicinity Map Radburn St. & Wellington Hill

- Properties owned by the Roman Catholic Church
- Properties owned by the City of Manchester

NOTES:

- This map was created in April 2008, by the City of Manchester Planning & Community Development Department (D. Beauchesson)
- Parcel lines were derived from aerial photography data shown on the map were derived from the file "Parcels_001" which is located in the City of Manchester GIS
- Aerial photography shown on the map was derived from a digital file called "Aerial_001" which is located in the City of Manchester GIS. The photo was taken in April 2003.



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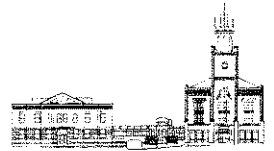


Robert S. MacKenzie, AICP
Director

CITY OF MANCHESTER

Planning and Community Development

Planning
Community Improvement Program
Growth Management



Staff to:
Planning Board
Heritage Commission
Millyard Design Review Committee

Memorandum

To: Lands & Buildings Committee

From: Robert S. MacKenzie *RS*
Director of Planning & Community Development

Date: January 2, 2007

Subject: Wellington Hill Mini-Lots

As we discussed previously with the Committee, we are working with the Diocese to dispose of certain properties that the City owns on Wellington Hill. These small lots owned by the City, the Diocese and certain other property owners total approximately 39 acres on Radburn Street. This area has not been developed because of the scattered ownership and unbuilt streets.

In order to proceed with disposition, there are several actions required by this Committee and other Committees. The two actions required of Lands and Buildings Committee include:

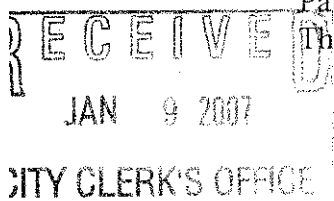
- 1) Determination of surplus of the properties of City needs; and
- 2) Approval of an agreement with the Diocese on the manner of disposition and the division of proceeds.

We have provided a letter with recommendation on determination of surplus and have attached a proposed agreement with the Diocese. We concur with the agreement and will be reviewing the key points with the Committee.

Two other actions which will be necessary include: a Release and Discharge of all paper streets and a potential rezoning of the area.

If you have any questions, I will be available at your next meeting..

c: Mayor Guinta
Paul Harrington
Thomas Clark, Esq.



4

One City Hall Plaza, Manchester, New Hampshire 03101
Phone: (603) 624-6450 Fax: (603) 624-6529
E-mail: planning@ManchesterNH.gov
www.ManchesterNH.gov

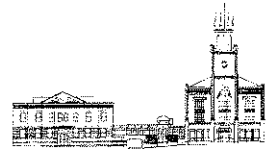


Robert S. MacKenzie, AICP
Director

CITY OF MANCHESTER

Planning and Community Development

Planning
Community Improvement Program
Growth Management



Staff to:
Planning Board
Heritage Commission
Millyard Design Review Committee

August 16, 2006

Committee on Lands and Buildings
City Hall
One City Hall Plaza
Manchester, NH 03101

re: *Proposed sale of City-owned properties on Wellington Hill*

Honorable Committee Members:

The City of Manchester and the Roman Catholic Diocese of Manchester have conceptually agreed to pool their numerous so-called "mini-lot" parcels (80+ lots) off the north side of Radburn Street on Wellington Hill to create a single large lot in order to facilitate the joint sale of that land for the mutual and equitable financial benefit of both parties.

Surplus Determination: Because of their very small size and scattered positioning in relation to each other (see attached map), the involved city-owned parcels are essentially unusable for any practical City purpose. We, therefore, recommend that all of the parcels owned by the City and associated with this request be declared surplus to City needs.

If there are any questions, staff will be available at the committee meeting.

Sincerely,

Robert S. MacKenzie, AICP
Director of Planning and Community Development

4

One City Hall Plaza, Manchester, New Hampshire 03101
Phone: (603) 624-6450 Fax: (603) 624-6529
E-mail: planning@ManchesterNH.gov
www.ManchesterNH.gov

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PHINNEY
BASS +
GREEN
PROFESSIONAL
ASSOCIATION



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1000 ELM STREET
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03101
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F 603 627-8121

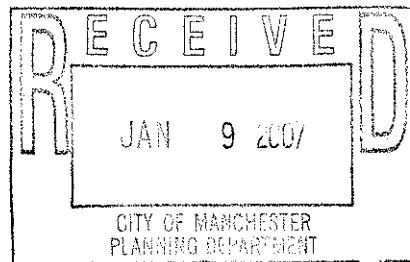
CONCORD
TWO EAGLE SQUARE
CONCORD, NH
03301
T 603 223-2020
F 603 224-8899

LEBANON
46 CENTERRA PARKWAY
LEBANON, NH
03766
T 603 643-9070
F 603 643-3679

BOSTON
ONE BOSTON PLACE
BOSTON, MA
02108
T 617 897-5600
F 617 439-9363

WWW.SHEEHAN.COM

Writer's Direct Dial
(603) 627-8110
Fax (603) 641-2343
bcook@sheehan.com



January 8, 2007

Mr. Robert McKenzie, Director of Planning
Planning Department—City of Manchester
City Hall—1 City Hall Plaza
Manchester, New Hampshire 03101

Re: Joint Marketing Agreement—Wellington Hill Lots

Dear Bob:

Enclosed find the revised agreement with revisions in the sections we discussed. I also changed the description of the property in the introductory paragraphs to fill in the blanks, renumbered the remaining paragraphs, and made a slight change to 1.3 providing for the parties to extend the agreement. It is also dated 2007 now.

Please let me know if you have any questions.

Sincerely,

Bradford E. Cook

BEC:ppd

Cc: Mr. Paul Harrington, Secretary for Real Estate, Diocese of Manchester

JOINT MARKETING AGREEMENT

THIS JOINT MARKETING AGREEMENT dated _____, 2007, among The Roman Catholic Bishop of Manchester, a corporation sole having a principal place of business at 153 Ash Street, Manchester, New Hampshire 03104 ("RCBM"), the City of Manchester, New Hampshire, a New Hampshire municipality with a principal address at City Hall, One City Hall Plaza, Manchester, New Hampshire, 03101 (the "City"), and _____ (the "Additional Landowners");

WHEREAS, the RCBM is the owner of certain land located in the vicinity of Radburn Street and Wellington Hill, City of Manchester, County of Hillsborough, State of New Hampshire which is more particularly described on Exhibit A hereto (the "RCBM Property");

WHEREAS, the City is the owner of certain land located in the vicinity of Radburn Street and Wellington Hill, City of Manchester, County of Hillsborough, State of New Hampshire which is more particularly described on Exhibit B attached hereto (the "City Property");

WHEREAS, the Additional Landowners are the owners of certain tracts of land located in the vicinity of Radburn Street and Wellington Hill, City of Manchester, County of Hillsborough, State of New Hampshire and more particularly described on Exhibit C hereto (the "Additional Landowners' Property");

WHEREAS, the RCBM, the City and the Additional Landowners are the owners of various contiguous tracts of land located in Manchester, New Hampshire, and desire to merge jointly market such lots according to the terms set forth herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. MERGER OF LOTS; POWER OF ATTORNEY.

1.1 The RCBM, the City and the Additional Landowners each agree the RCBM Property, the City Property and the Additional Landowners' Property shall be merged into a single lot (the "Merged Lot"). The timing of the merger of property will be agreed upon by the parties in consultation with their real estate agent and in consultation with potential purchasers and possibly may not be done prior to the signing of a purchase and sale agreement, in which case the parties agree to do such things as are required to convey the property as one or more lots, as required by such agreement with a potential purchaser or purchasers.

1.2 The RCBM and the Additional Landowners' hereby appoint the City as their attorney-in-fact to obtain all merger and rezoning approvals, to eliminate all paper streets, and to obtain such other approvals as may be necessary or helpful to market the properties or the Merged Lot (the "Approvals"). The parties agree that this power of attorney is coupled with an interest and will be irrevocable for the term of this Agreement. The RCBM and the Additional

Landowners agree to cooperate in any and all activities necessary to obtain the Approvals. The representation by the City as attorney-in-fact hereunder shall be at the City's sole expense. Notwithstanding this appointment, the RCBM and the Additional Landowners reserve the right to have their representatives, attorneys or agents review and comment upon all applications to be filed with relevant regulatory bodies or groups and to appear and participate in all hearings, at their sole expense.

1.3 This Agreement and the power of attorney contained herein shall automatically terminate if the Approvals have not been obtained on or before June 30, 2007 or if the property has not been sold on or before February 29, 2008, unless previously extended by written agreement of the parties.

2. BROKERS.

2.1 The parties agree to retain Michael Reed of Stebbins Commercial Properties, Inc. (the "Broker") as their real estate agent for purposes of marketing the properties or Merged Lot. The parties shall mutually agree upon a minimum selling price for the properties or Merged Lot (the "Minimum Purchase Price"). The parties each agree to execute such listing agreements that are reasonably necessary to retain the Broker.

2.2 Each party hereto represents that except as set forth above, it has involved no other real estate agent or broker for the sale of its lot. The parties each agree to indemnify the others for all claims arising out of claims for brokerage commissions asserted by third parties whose claim derives from the party received to make indemnification.

3. PURCHASE AND SALES AGREEMENTS. The parties agree that they will not withhold their consent to any purchase and sale agreement for the properties or Merged Lot containing a purchase price of at least the Minimum Purchase Price unreasonably. The parties agree that the purchase and sale agreement shall contain similar representations, warranties, conditions, agreements or indemnities for each party (other than representations, warranties, conditions, agreements and indemnities which are addressed to unique conditions relating to the ownership or condition of that owner's property).

4. DISTRIBUTION OF PURCHASE PRICE AND EXPENSES. The parties agree that upon the sale of the properties or Merged Lot, the aggregate purchase price shall be allocated between them *pro rata* according to the ratio that the square footage of their own property bears to the entire Merged Lot. All costs and expenses incurred in connection with the sale of the Merged Lot shall be similarly allocated *pro rata* between the parties, provided that the City shall not be obligated to pay its *pro rata* share of New Hampshire Real Estate Transfer Taxes to the extent that sale of the City Property is exempt from such taxes.

5. COVENANTS. The parties each agree that they will not (a) sell, convey, encumber or otherwise transfer or attempt to transfer any interest in their respective properties other than as set forth herein; or (b) excavate, build upon, waste or otherwise alter the existing physical condition of their respective properties.

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6. QUIET TITLE ACTION. All parties to this agreement hereby consent to the commencement of a quiet title action in their names to quiet the title to "paper streets" in the area of the property in question, should such action be required, in the opinion of counsel to the City or RCBM.
7. RETENTION OF EMERGENCY ACCESS. The parties agree that any purchase and sale agreement for sale of all property hereunder will contain a provision requiring the buyer and any subsequent grantee developing the property to maintain the emergency access presently afforded to Smith Road by the "class six" road adjacent to the property, or by acceptable alternate route.
8. DEFAULT. If any party fails or refuses to comply fully with the terms of this Agreement for any reason, the aggrieved parties may upon unanimous agreement of the aggrieved parties, pursue all legal or equitable remedies available to them, including without limitation a suit for specific performance.
9. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute but one and the same agreement.
10. APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of New Hampshire without regard to its conflicts of laws principles. Any action arising out of this Agreement shall be brought in the Hillsborough County Superior Court, to the exclusion of all other jurisdictions.
11. BINDING EFFECT AND ASSIGNMENT. The provisions of this Agreement shall be binding on and shall inure to the benefit of the parties' respective successors and assigns. Neither party may sell, assign, option or otherwise transfer, in whole or in part, conditionally or unconditionally, any of its rights under this Agreement without the prior written consent of the others.
12. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding between the parties with respect to the transactions described herein. All representations, statements and agreements heretofore made by the parties are merged into this Agreement, which is the full expression of the parties' rights and obligations concerning the joint marketing of their respective properties. This Agreement may not be changed, modified or amended except by in writing signed by each party.

[Signatures to Follow]

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IN WITNESS WHEREOF, the parties have set their hands and seals, this _____ day of _____, 2007.

CITY OF MANCHESTER, NEW HAMPSHIRE
a New Hampshire Municipal Corporation

By: _____
Hon. Frank Guinta, Mayor, Duly Authorized

ROMAN CATHOLIC BISHOP OF
MANCHESTER, a Corporation Sole,

By: _____
Most Rev. John B. McCormack, Bishop

Witness

Witness

Witness

[]

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

This instrument was acknowledged before me on this _____ day of _____,
2007 by Frank Guinta, as Mayor of City of Manchester, New Hampshire.

Notary Public/ Justice of the Peace
My Commission Expires: _____

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

This instrument was acknowledged before me on this _____ day of _____,
2007 by Most Rev. John B. McCormack, Roman Catholic Bishop of Manchester, on behalf of
the Roman Catholic Bishop of Manchester, a corporation sole.

Notary Public/ Justice of the Peace
My Commission Expires: _____

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

This instrument was acknowledged before me on this _____ day of _____,
2007 by _____.

Notary Public/ Justice of the Peace
My Commission Expires: _____

EXHIBIT A

RCBM PROPERTY

EXHIBIT B

CITY PROPERTY

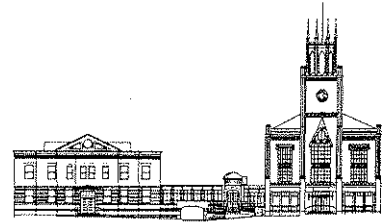
EXHIBIT C

ADDITIONAL LANDOWNERS' PROPERTY



CITY OF MANCHESTER Board of Assessors

One City Hall Plaza, West Wing
Manchester, New Hampshire 03101
Tel: (603) 624-6520 – Fax: (603) 628-6288
Email: assessors@ci.manchester.nh.us
Web: www.ManchesterNH.Gov



David M. Cornell, Chairman
Thomas C. Nichols
Stephan W. Hamilton

Christine Hanagan
Assistant to Assessors

To: Committee on Lands and Buildings

From: Board of Assessors

Date: January 12, 2007

Re: Wellington Hill "mini-lots"

Dear Chairman Thibault and Committee Members:

As part of the disposition process of City owned land, the fair market value of a property must be established. On August 14, 2006, Fremeau Appraisal, Inc. performed an appraisal on the above-mentioned lots. The Board of Assessors has reviewed the appraisal, and we believe that the valuation is well supported and conforms to sound appraisal methodology.

The Board of Assessors recommends that the Committee accepts the valuations submitted in the Fremeau Appraisal, pursuant to Section 34:19 of the Code of Ordinances.

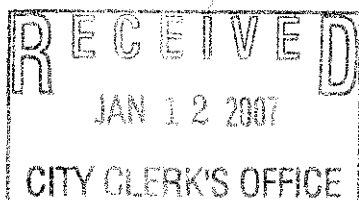
We remain available to answer any questions the committee might have concerning this matter.

Sincerely,

David M. Cornell
David M. Cornell

Thomas C. Nichols
Thomas C. Nichols

Stephan W. Hamilton
Stephan W. Hamilton



4



City of Manchester
Office of the Tax Collector

City Hall
One City Hall Plaza - West
Manchester, New Hampshire 03101
(603) 624-6575 (Phone)
(603) 628-6162 (Fax)

Joan A. Porter
Tax Collector

Memorandum

DATE: January 16, 2007
TO: Land & Building Committee
FROM: Joan A. Porter, Tax Collector *JAP*
RE: Miscellaneous Parcels at Wellington Hill

The Tax Collector's office has no opposition to the disposition of certain tax-deeded parcels located at Wellington Hill to be packaged and sold in cooperation with the Diocese of Manchester.

Johnson, Carol

From: Lopez, Michael
Sent: Tuesday, January 23, 2007 6:38 PM
To: aldmjl@aol.com
Subject: FW: Re sale of land on Wellington Rd

From: KENNETH MONTY[SMTP:KENNETH.MONTY@VERIZON.NET]
Sent: Tuesday, January 23, 2007 6:37:16 PM
To: Lopez, Michael
Subject: Re sale of land on Wellington Rd
Auto forwarded by a Rule

Dear Mr. Lopez,

Re the negative vote for the sale of the land on Wellington Rd, patially owned by the Diocese for St Joseph Cathedral Parish, please see the following comments which were shared with me by the Cathedral pastor, Fr. Joe Cooper.

This is negatively impacting the hearts and wallets of Cathedral parishioners....who will of course remember those aldermen who voted "nay" on this matter...when re-election time comes up. Please share this info with other aldermen, as I am unable to locate email addresses for them all!

Thank you for your time, consideration, and service to our community.

Ken Monty

Manchester, NH

>>>>>>Your understanding is absolutely correct regarding the property on Wellington Road. The proceeds from sale of the property is based on the number of acres that the Cathedral owns through St. George's. While the diocese also has land in that section, the monies from the sale of the St. George's lots will come entirely to the Cathedral for the continuation of the work of the Cathedral. What the aldermen have done, in effect, is thwarted our plans to replace the roof on the Cathedral and establishing a foundation so that the Cathedral will not suffer the same issues as St. Anne's, namely, collapsing ceilings, peeling walls, etc. It is intended that the money from the sale of the Wellington Road property would help us maintain the building and programs of the Cathedral in perpetuity. Effectively, what Dan O'Neil and the aldermen have done by their negative vote is to penalize the people of the Cathedral parish over their disagreement with the disposition of the St. Anne property. So, for all of their efforts to preserve one building, they are allowing a second one, with an active, vibrant congregation, to suffer just so they can make a point. Our consolation right now is that our God is a God of mercy--but also of justice. I wonder how Dan and the aldermen will stand before God on this one. I appreciate the historicity (St. Anne's was my first assignment), but I can't help but wonder how penalizing the Cathedral parish is helping them in the grand scheme of things.

1/24/2007

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